الاصول الاروع فی المذاهب الاربع

Beginner's Guide: The Four Schools of Fiqh



An abridged version of the work of Shaykh Muhammad Abu Zahra Al-Misri ﵁

Compiled by
Tehseen Raza Hamdani
Nuri

AJMERI PRESS

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The wondrous principles in the Four Schools
Beginner's Guide: The Four Schools of *Fiqh*

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Preface

بسم الله الرحمن الرحيم

نحمده و نصلی و نسلم علی رسوله الكريم

It is well known, within the Muslim community, the importance of following a *fiqh* of one of the four Imams. Our pious predecessors, along with the past 1300 years of scholarship, have indicated its necessity for every Muslim male and female, who are not experts in retrieving rulings from the Qur'an and Sunnah. It is from the uniqueness of this nation of the final Prophet ﷺ that they will not unite on misguidance. Yet, we have a radical faction within the Muslim circles who propagate its invalidity and accuse the Ahl as-Sunnah of polytheism in this regard. Wearing the garb of '*Salafism*' and striking the dagger of '*Wahaabism*' – these claimants have disregarded the majority and the mainstream Islam only to follow their whims and fancies.

Indeed, it is not hidden for every sane mind that leaving the mainstream Islam is spiritual suicide akin to throwing oneself into the pit of misguidance; however the minority radicals remain adamant on their arrogance. So be it – we are not the ones to cause changes to the hearts. We leave that to Allah, the Most Wise. As for those who are sincere in following the Imams – in accordance with our pious predecessors – it is vital for them to understand the basic definitions and principles of every *Madhab* of *fiqh*, or at least their own. Where are the rulings derived from? Why are the rulings different in each *Madhabs*? What is the rationale behind every *fiqh*? These questions will be answered by learning the principles of each

of the *fiqh Madhab* and one will realise that they are retrieved from the Qur'an and the *Sunnah*. The other principles are nothing more but an extension from these primary sources of Islam. When a *Hadith* scholar like Imam Bukhari ﵁, a Sufi Shaykh like Shaykh Abdul Qaadir Jilaani ﵁ and a commentator of the Qur'an like Imam Fakhruddin Raazi ﵁ chose to follow one of the *Madhabs* – it is clear to reason and emotion that we should do the same.

I have used the immaculate book of Shaykh Muhammad Abu Zahra Al-Misri [1894-1978] to compile and summarise his work in this abridged version – for I experienced that a concise book that explains the principles of each *fiqh* is quite necessary. I have avoided much of the merits of each of the Imams for the sake of brevity. This book is focused on their principles of *fiqh* which they derived from the primary sources and how each Imam faced various circumstances in their respective times. It is my humble plea to our students of knowledge to learn about this before attempting to study *fiqh*, as this will broaden one's intellectual horizon. As for the other readers who are not students, for them this book will serve as a gateway to realise the intellectual aptitude and viable necessity of following a *Madhab*. I have included a brief overview in the following page that surmises the entire subject.

Dust beneath the shoes of the Saints
Tehseen Raza Hamdani
Nuri

A Brief Overview

	Imam Abu Hanifa	Imam Malik bin Anas	Imam Ash-Shaafi’	Imam Ahmad bin Hambal
Birth	80 AH	93 AH	150 AH	164 AH
Death	150 AH	179 AH	204 AH	241 AH
Age [at demise]	70	86	54	77
Family background	Persian	Yemeni Arab	Qurayshi Arab	Shaybaani Arab
Birth place	Kufa	Madina	Gaza	Baghdad
Buried in	Baghdad	Madina	Cairo	Baghdad
Famous agnomen	Imam Al-A’zam	Imam Darul Hijra	Shaykh Al-Islam	Imam Ahl As Sunnah
Primary teacher	Hammaad bin Sulayman	Imam Naafi’	Sufyan ibn Uyayna	Imam Shaafi’
Primary student	Qadhi Abu Yusuf	Ibn Al Qasim	Ibn Yahya Al Muzani	Salih ibn Ahmad
Nature of *fiqh*	Unilateral	Natural disposition	Diversified	Moderation
Type of Deduction	Rational deduction	Hybrid deduction	Codified deduction	Traditional deduction
Population following	55%	18%	20%	7%
Geography	Asia/Africa/ Far East & Australia	North & West Africa	Middle East	Middle East

بسم الله الرحمن الرحيم

"*I saw a man if he were to speak to you regarding this pillar that he will make it gold then it would happen through his proofs*"

[Imam Maalik in praise of Imam Abu Hanifa]

Imam Abu Hanifa

رضي الله عنه

Nu'man ibn Thaabit ibn Zawti, known as Abu Hanifa – was born in Kufa in the year 80 AH. He was of a Persian descent and had the opportunity of meeting the Companions in his childhood. Thus, this distinction is unique in his aspect, from the other three Imams, that he is from the community of the Followers. He first turned towards learning *Kalam*[1] but this did not suit with him well. He then turned to grammar and thereafter poetry, then the recitation of the Qur'an [*qir'at*']. After this, he looked towards collecting *hadith* but he thought to himself that this effort will require long life to amass all the *hadith*. He finally entered the realm of *fiqh*[2] and he found this knowledge with the most esteem.

It is narrated by Hazrat Abu Hurairah رضي الله عنه that the Holy Prophet ﷺ said,

لو كان الدين عند الثريا لذهب به رجل من فارس او قال من ابناء فارس

حتى يتناوله

> "If the Religion was to be stationed in a distant cluster of stars, then a man from Persia would have taken hold of it, – or he said – one amongst the children of Persians would surely grasp it"[3]

[1] The knowledge on doctrine and the art of refuting deviants
[2] *Fiqh* – the knowledge of the sacred Law; its principles, derivatives, constitution and rulings.
[3] Sahih Al-Muslim, Book 44, Hadith 326

It is related in the *Kitaab Ar-Ru'ya* of Imam Muhammad ibn Sireen[4] that when Imam Abu Hanifa ﵁ was still a child, he dreamed that he was excavating the grave of the Holy Prophet ﷺ. He related this dream to one of his teachers. The teacher said, *"My child, if your dream is genuine then you will follow in the footsteps of the Holy Prophet ﷺ and you will also do great research in his religious laws"*[5]. Every word of this interpretation manifested to be true and correct as it is known by one and all. He passed away in Baghdad in the year 150 AH at the age of 70.

The fact that Imam Abu Hanifa ﵁ did not write a book on *fiqh* is in keeping with the spirit of his age. Writing books only became widespread near the end of his life. There were *mujtahids*[6] in the time of the *Sahaaba* who forbade their *fatwas*[7] to be recorded and even forbade the *Sunnah* to be written down, so that there would be no confusion between it and the Book of Allah. As time went on, however, scholars found it necessary to record the *Sunnah* in order to preserve it, and so they did so and collected *fatwas* and *fiqh* as well.

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[4] He was from the Followers [*tabi'een*]. A contemporary of Hasan Basri and a great scholar of *Hadith*. He met many Companions, including Ali Ibn Abi Talib [may Allah be pleased with him].

[5] Kitaab ar-Ru'ya, Ibn Sireen

[6] A super elite scholar of Islam with profound intelligence who is able to retrieve intricate rulings from the Qur'an and Sunnah. Scholars like the four Imams and others of their station are known as Mujtahideen – scholars who practice *ijtihad* – investigational deduction to come up with a ruling based on the texts of the Qur'an and Sunnah. They are the primary figures who formulate jurisprudence.

[7] Rulings or verdicts of a scholar

It is clear, though, that these collections were not books organised into chapters. They were more akin to private notes to which a *mujtahid* would refer and not a book for the general public. The *mujtahid* would write them down to avoid forgetting them. Imam Abu Hanifa’s students, however, did write down his views and recorded them. Sometimes that would be by his dictation but they were still in the form of individual notes. Sometimes he would ask them to read what they had written and he would confirm or alter it. Most of what we have from Imam Muhammad Ash-Shaybaani[8] ﵁ is from Imam Abu Yusuf[9] ﵁ since Ash-Shaybaani and other students had not been with Imam Abu Hanifa long enough to gain such comprehensive knowledge.

It is stated in by Al Bazzaaziya,

> “Abu Abdullah narrates that I used to read Imam Abu Hanifa’s statements to him and Imam Abu Yusuf would also insert his own statements in it. I used to try not to mention the position (on a certain issue) of Imam

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[8] Abu 'Abdullah Muḥammad ibnu-l-Ḥasan Ibn Farqad ash-Shaybānī was an Islamic jurist and a disciple of Imam Abu Hanifa, Malik ibn Anas and Abu Yusuf. His works, known collectively as *Zahir al-Riwaya*, were considered authoritative by Hanafis; they are al-Mabsut, al-Jami al-Kabir, al-Jami al-Saghir, al-Siyar al-Kabir, al-Siyar al-Saghir, and al-Ziyadat. He passed away in 189 AH in a place called Ray, Iran.

[9] Yaqub ibn Ibrahim al-Ansari, better known as Abu Yusuf was a student of Imam Abu Hanifah who helped spread the influence of the Hanafi school of Islamic law through his writings and the government positions he held. He served as the chief judge (qadi al-qudat) during reign of Harun al-Rashid. He passed away in 181 AH and is buried in Baghdad, in the vicinity of the sanctified grave of Imam Musa Al-Kaadhim ﵁.

Abu Yusuf along with Imam Abu Hanifa. One day I made a slip of the tongue and muddled them"[10].

Al Makki states,

> "Imam Abu Hanifa was the first to record the knowledge of this Shari'ah which no one had done before him because the Companions and Taabi'een did not set down their knowledge of Shari'ah into topics or structured books. They relied on their strong memories and made their hearts the repositories of their knowledge. Imam Abu Hanifa grew up after them. He saw that knowledge had become scattered and feared there would be unfortunate consequences if it were lost. The Holy Prophet ﷺ stated, 'Allah Almighty will not take away knowledge by stripping it from the hearts of people. It will be taken away by the death of scholars. Ignorant leaders will remain and give fatwas without knowledge and be misguided and misguide'; therefore Imam Abu Hanifa recorded it into topics'[11]

MUSNAD OF IMAM ABU HANIFA ﵁

Scholars have mentioned a transmission of *Ahaadith* via Imam Abu Hanifa ﵁ which is arranged in the order of *fiqh* and its rulings. This was known as a '*Musnad'* like that of Imam Ahmed bin Hambal ﵁ but this was collected and compiled separately by his students, Imam Abu Yusuf and Imam

[10] Fatawa Bazzaziya, Imam Muhammad Khawarzami [d.827 AH]

[11] Al-Khayrat al-Hisan fi Manaqib Abi Hanifah an-Numan, Ibn Hajar Al-Haythami Al-Makki [d. 974 AH]

Muhammad, and both of them named it '*Al-Athar'*. Hafiz ibn Hajar Asqalaani said,

> "As for the Musnad of Imam Abu Hanifa, he did not collect it himself. The Hadiths of Abu Hanifa is found in the Kitaab al-Athar which Shaybaani related and other Ahaadith of Abu Hanifa can be found in the books of Imam Shaybaani and Imam Abu Yusuf. Abu Muhammad al-Harithi, who lived in 300 AH, was interested in the hadiths of Imam Abu Hanifa and collected them in a volume"[12].

HYPOTHETICAL FIQH

By hypothetical we mean the deducing of fatwas regarding unknown situations or situations that have not taken place, but only imagined. In the course of deducing the reasons behind rulings established by the Qur'an and the Sunnah, they had to theorise hypothetical situations in order to ascertain the causes for the rulings and apply them. Imam Abu Hanifa ﷺ frequently utilised this method since he used analogy a great deal and derived the causes from the texts and their contexts. It has been stated that the great Imam ﷺ devised 30 000 such hypotheses. The History of Baghdad reports that when Hazrat Abu Qataada ﷺ came to Kufa, Imam Abu Hanifa went to him and asked him, "*Abu'l Khattaab, what do you say about a man who is absent from his family for years so that his wife thinks that he has died and remarries but then the first husband returns: what do you say about her mahr?"* He had told his companions who had gathered*, "If he relates a hadith he will be lying. If he speaks by his own opinion he will err."* Hazrat Abu Qataada

[12] Taajil Al-Munfa'a, Imam Ibn Hajar Asqalaani [d. 852 AH]

exclaimed, *"O brother, has this occurred?"* Imam replied, *"No"*. Hazrat Qataada then asked, *"Why do you ask me about something that has not happened?"* Imam Abu Hanifa ﵁ replied, *"We prepare for affliction before it occurs. When it occurs, we will know what to do and how to get out of it."*[13]

Imam Abu Hanifa's leaning towards hypothesis and theorising was due to his profound grasp of the texts and his acting according to the consequences of the meaning and thereby applying the ruling to all situations with similar root causes. Al Hajawi claims that Imam Abu Hanifa ﵁ is the one who originated hypothetical *fiqh*. He said,

> "Fiqh in the time of the Holy Prophet ﷺ was confined to explicit rulings about what had actually occurred. After him, the Companions and other great Taabi'een used to clarify the rulings regarding what occurred in their time while preserving the rulings for what had occurred before them and thus fiqh increased in its branches. Imam Abu Hanifa is the one who unleashed theoretical questions, hypothesising situations that might occur and what their rulings would be, either by analogy based on what had occurred or by extracting general principles. So fiqh developed and grew."[14]

THE FUNDAMENTAL PRINCIPLES OF HANAFI FIQH

Imam Abu Hanifa ﵁ did not use analogy from an unknown source but he used the principles of the Companions as a means of analogical method of disclosing a certain matter of *fiqh*. It is

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[13] Taarikh Al-Baghdad, Ibn Asaakir [d. 571 AH]
[14] Al-Fikr As-Saami, Imam Musa Al-Hajjawi [d. 968 AH]

stated in '*Taarikh Al Baghdad'* in which Imam Abu Hanifa ﵁ exclaimed,

> "When I do not find the ruling in the Book of Allah or the Sunnah of the Messenger of Allah ﷺ, I can then take the statement of his Companions if I wish and leave those of other people. But I do not disregard their words for the words of anyone else. But when it is a question of Imam Ibrahim an-Nakhaai, Ash-Shu'bi, Al-Hasan Al-Basri, Ibn as-Sireen or Sa'id ibn al-Musayyab, then I can exercise *ijtihaad* (expert deduction) in the same way that they did"[15]

Al Hajar Makki states,

> "Imam Abu Hanifa took what was reliable, avoided the unseemly, and investigated people's behaviour and what was correct for them and was in their best interests. He used analogy for matters but, if analogy led to something unseemly, he used istihsaan (discretion) if it was appropriate, he referred to what the Muslims generally did. He used to attach himself to a known Hadith on which people were agreed and then form an analogy if that was possible. He would then use istihsaan and take whichever of them was more correct." Sahl said, "Imam Abu Hanifa investigated which Ahaadith were abrogating (*naasikha*) and which abrogated (*mansookha*) and acted according to the Hadith when he considered it established from the Messenger ﷺ via his Companions. He knew the

[15] Taarikh Al-Baghdad, Imam Ibn Asaakir [d. 571 AH]

Ahaadith of the people of Kufa and was strong in following that he found in his land".[16]

From these sources, we can see that the order of legal evidence used by Imam Abu Hanifa ﵁ was the Qur'an, then the Sunnah, then the statements of the Companions, then the consensus, then analogy, then discretion and lastly the customs.

THE QUR'AN

This was the first and primary source of the *Fiqh* of Imam Abu Hanifa ﵁. The Qur'an contains the totality of the *Shari'ah* and in it are defined rules and those rulings which will not change over the course of time, thus it contains the eternal and universal law for all mankind. The *Sunnah* of the Holy Prophet ﷺ derives its strength from it and clarifies what needs to be clarified in it and provides necessary detail. Hence the Qur'an and the Sunnah are inseparable as the basis of *Shari'ah*. Some verses of the Qur'an connected to the judgements require further clarification. They require some more details, or there is something implicit in them which require explanations, or they are unrestricted and need to be qualified. The jurists have expounded the principles of the *fiqh* of Imam Abu Hanifa ﵁ and its adherents undertook to clarify the Noble Qur'an.

One aspect of the Book that is expounded in this school is the use of '*amm* [generality]. It indicates a general meaning but also a shared meaning; for example, a human being indicates man, woman, black, white, Zayd, Bakr and so forth. Whereas, the *khaass* [specific] applies to a specific aspect of what is

[16] Al-Khayrat al-Hisan fi Manaqib Abi Hanifah an-Numan, Ibn Hajar Al-Haythami Al-Makki [d. 974 AH]

alluded to by a general expression. The Hanafis say that the general is definitive in its evidence and can abrogate the specific; whether it occurs in the Qur'an or *Sunnah*.

The way the *Sunnah* clarifies the noble Qur'an is subdivided into three categories:

a. Clarification by confirmation – this is when the *Sunnah* reinforces the meaning of the verse
b. Clarification by explanation – this when the *Sunnah* clarifies something implicit in a verse when the text is general
c. Clarification by supersession – this when the *Sunnah* abrogates a verse in the Qur'an. This will take place if it the *Sunnah* is confirmed with multiple transmission or well-known transmission.

THE SUNNAH

This is the second source on which Imam Abu Hanifa ﵁ relied on deduction. It elucidates the Qur'an and what it elucidates comes after what is elucidated and serves it. The Holy Prophet ﷺ sent Muadh ibn Jabal to Yemen and asked him, *"By what will you judge?"* He replied, *"By the Book of Allah"*. He asked, *"And if you cannot find it?" "By the Sunnah of the Messenger of Allah",* he replied. He asked, *"And if you do not find it there?"* He replied, *"Then I will exercise my opinion."* The Messenger of Allah ﷺ then patted him on the breast and said: *"Praise be to Allah, Who has helped the messenger of the Messenger of Allah, to find something which pleases the Messenger of Allah."*[17] This Hadith confirms whatever is

[17] Sunan Abi Dawood, Kitab Al-Aqdiya, Hadith no. 3592

transmitted from Imam Abu Hanifa ﵁ is correct. Imam Abu Hanifa ﵁ was accused by his opponents for using *ijtihaad* [deduction] before the *Sunnah*. Imam Abu Hanifa ﵁ denied this allegation and said,

> *"By Allah, it is a lie about us if someone says that we advance analogy over a textual evidence (Qur'an or Sunnah). Is there any need for analogy when the text exists?"* In another place Imam Abu Hanifa ﵁ has been reported to have said, *"We act first by the Book of Allah and then by the Sunnah of the Messenger ﷺ, and then by the Ahaadith of Abu Bakr, Umar, Uthmaan and Ali – may Allah be pleased with all of them.*"[18]

Imam Abu Hanifa ﵁ was from the early jurists who accepted single chained transmission of *Hadith* [*Khabr e Waahid*] and to formulate his views in accordance to them if it contradicted his opinion. He accepted the single *hadith* if the source of it came from the well-known Companions, famous for their *fiqh* and insight – like the rightly guided companions. In this instance, the *hadith* was preferred over analogy. However, if the source was otherwise, then it was considered in the light of analogy and accepted or ignored. Like Imam Maalik, Imam Abu Hanifa ﵁ used to accept *Mursal hadith*. A *Mursal hadith* is when a *Taabi'* does not mention the name of the Companion who related to him; or when the chain is not mentioned to the Prophet ﷺ. The Hanafis used to accept the *Mursal hadith* from the Companions, Tabi'oon and the third generation – but not from those after them. This was the case in the time of Abu

[18] Al-Mizaan, Imam Abdul Wah'aab Ash-Sha'raani [d. 973 AH]

Hanifa رضي الله عنه because forgery of *hadith* became rampant after his time.

FATAAWA OF COMPANIONS

Imam Abu Hanifa رضي الله عنه acted upon the decisions of the Companions in the absence of text from the Qur'an or *Sunnah*. If there were any differing opinions amongst the Companions; he then chose from their views, taking the position of whomsoever he wished, and he did not abandon their position for anyone else. Imam Abu Hanifa رضي الله عنه used to differ from the Companions on matters in which there was a scope for opinion. On matters in which there was no scope and there was a firm transmission – he followed them. Hence, his *fiqh* entails that the minimum days of menstruation is three and the maximum is ten days. This is from a firm transmission from Anas bin Maalik رضي الله عنه and Uthmaan ibn Abil Aas رضي الله عنه. Therefore, in cases like these, he did not find the need to deduce but instead he followed them. Imam Abu Hanifa رضي الله عنه placed the position of the Companions before analogy. He did not consider that it to be mandatory to follow the *fataawa* of the *Taabi'oon*.

CONSENSUS (*IJMAA*)

Consensus is the agreement of the Mujtahids on any matter at the time of the ruling. Imam Abu Hanifa رضي الله عنه and his students used to accept implicit consensus and thought that the opposition to such consensus was only valid if scholars had different opinions on a matter.

ANALOGY (*IJTIHAAD*)

The analogy which Imam Abu Hanifa رضي الله عنه mostly used was to explain the ruling of a matter without a text (in the Qur'an or in

the *Sunnah*) by ruling it according to something whose ruling is known by the Qur'an, *Sunnah* or consensus since both matters share the same underlying cause. Imam Abu Hanifa's *ijtihaad* and his method in understanding the *hadith*, coupled with the environment in which he lived, made him use a lot of analogy and ramify secondary rulings accordingly. This is because in his *ijtihaad* Imam Abu Hanifa رضي الله عنه did not stop at investigating the rulings of problems which had actually occurred but would extend his reasoning to rulings in respect of problems which had not yet transpired. He would theorise in order to be prepared for circumstances before they occurred so as to be ready to deal with them when the time arrives.

Imam Abu Hanifa رضي الله عنه used to ascertain the circumstances in which a verse had been revealed. He studied those questions whose legal reasons were mentioned in *hadith* until he was considered the best of those who explain *hadith*. He did not confine himself to the literal element of the *hadith* but explained the inherent intentions and objectives underlying the outward garb. In addition, Iraq was not a place where a lot of *hadith* were found therefore this compelled him to make more extensive use of analogy than he might otherwise have done. He divided the texts into two categories: those dealing with worship and those dealing with worldly matters. He applied reasoning in the worldly matters only because there was no use of analogy in texts dealing with worship.

DISCRETION (*ISTIHSAAN*)

Other Mujtahids like Imam Maalik رضي الله عنه and Imam Shaafi رضي الله عنه strongly criticised Imam Abu Hanifa رضي الله عنه for using discretion, and some jurists who came later also disagreed with him in this

field. Imam Abu Hanifa رضي الله عنه used discretion to restrain analogy. Al Karkhi states,

> "Istihsaan is that the Mujtahid departs from an established precedent in favour of another ruling for a stronger reason which necessitates turning away from the precedent"[19]

This was exactly the reason Imam Abu Hanifa رضي الله عنه utilised discretion since he observed that some rulings through the analogy may become unseemly, therefore discretion would be used by the Imam out of wisdom. This field is highly intricate and only those with necessary knowledge may have the expertise to utilise it.

CUSTOM (*URF*)

When there was no analogy or discretion, Imam Abu Hanifa رضي الله عنه looked to see what the behaviour of the people was and what was in their best interests. He used this normative custom if there was no text in the Qur'an, Sunnah, consensus, and there had been no application of analogy based on another ruling or discretion with all its methods.

CONCLUSION

Hanafi *fiqh* is followed by the majority of the Muslims in the modern world when compared to other schools of *fiqh*. The upshot of this *fiqh* is that it is unilateral, that is, it is autonomous and independent from being too literal and greater in rationality and objectivity behind the texts.

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[19] Risalah 'Usul, Imam al-Karkhi [d. 340 AH]

“*It shall soon be that people are hastening to travel in seeking knowledge [by beating the flanks of the camels], but they will not find anyone more knowledgeable than a scholar of Al-Madinah*”

[Jaami’ Tirmidhi, Hadith 2680. Imam Dhahabi posits that this statement of the Prophet ﷺ is in reference to Imam Malik bin Anas]

Imam Maalik

ﷺ

Maalik ibn Anas ibn Maalik ibn Abi ‘Amr Al-Yemeni was born in Madina 93 years after Hijrah. He lived in Madinah for his entire life and died in it, in 179 AH, and is buried in the blessed graveyard of Al-Baqi; at the feet of his teacher – An-Naafi’ – the freed slave of the companion: Abdullah ibn Umar [may Allah be pleased with him]. His esteem for the city of the Messenger ﷺ was legendary and had an enormous impact on his noble morals, pristine ethics and his way of *fiqh*. He did not ride a horse in it; neither did he wear any shoes – for he used to avoid this out of profound respect for the Prophet of Allah ﷺ.[20]

He confined himself to two areas of knowledge: *fiqh* and *hadith*. He did not like to argue about the differences of reports of the various sects, which were prevalent in his time; rather he would answer any questions pertaining to the falsehood of the deviant sects with the people of knowledge, not in public. This was his dignified way of transmitting his knowledge to those who were capable of handling it, instead of the public because the laymen would only infer something that will lead an individual to confusion. However, it is related that he had mastery over four categories of knowledge which he had sought from his teachers, which later-on became foundations of the *Maaliki fiqh*.

Firstly, he was a learned man in *Ilm-al Kalam* [knowledge of doctrines], for he knew the art of refuting the deviants and restoring harmony amongst the people when they were divided over a certain matter. Secondly, he was learned in the verdicts

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[20] Ash-Shifa, Qadhi Ayadh Al-Maaliki [d. 544 AH]

[*fataawa*] of the Companions which he retrieved from the *Taabi'oon* [Successors of the Companions] and *Tabaa Taabi'oon* [Followers of the successors]. Thirdly, he was a master in *fiqh ar-ray* [understanding by mental perception or reliable opinions] which he used to corroborate different views into a single platform. Fourthly, he was an expert in the *hadith* of the Messenger of Allah ﷺ.

Imam Shaafi' رضي الله عنه said:

> "When a Hadith comes to you from Maalik hold on to it tightly. When a Hadith comes to you from him know that Maalik is the star. When scholars are mentioned know that Maalik is the star. No one reached the level that Maalik did in knowledge through his memory, his proficiency and his scrupulousness. Whoever wants sound Hadith must have Maalik"[21]

Imam Maalik was a *Muhaddith* [*hadith* scholar] and a *Faqih* [*fiqh* scholar]. He did not seek anything but knowledge of the Qur'an and the *Sunnah* and the path of the early Muslims that followed. Therefore, he derived his opinions first from the Book of Allah, then the Sunnah, and then from the statements and judgements of the Companions; and those who followed them.

AL-MUWATTAA

This book is authentically ascribed to Imam Maalik رضي الله عنه and it is considered to be the first book written on *Hadith* and *Fiqh*. It

[21] Four Imams, Abu Zahra Misri

was the practice of his time that the scholars would transmit *hadith* orally due to the extraordinary intellect they possessed but Imam Maalik ﵁ foresaw the dangers of manipulation of the *hadith* of the Messenger of Allah ﷺ due to the emergence of deviants; hence he compiled the *Muwattaa*. Imam Maalik ﵁ chose those narrations of which the narrator was in his complete confidence. He used to assess the knowledge, intelligence and the character of the narrator – and when he would have complete confidence in them he would include the *hadith* from the narrator. There is nothing older than *Muwattaa* in terms of *hadith.* The famous *Jaami*' of Al-Bukhari only came into existence many decades later; and this point was important to make as some individuals do not see anything before Al-Bukhari's *Jaami'* [may Allah have mercy on him].

Therefore; we come to know that the steps taken by Imam Maalik ﵁ to formulate his *Fiqh* was to first take things from the Book of Allah; then the *Sunnah*, then the statements of the Companions; which he related from the famous seven jurists of Madinah al-Munawwarah. Then he utilised *ijtihaad* [independent deduction] using analogy and *masaalih mursala* [considerations of public interest]. The seven jurists of Madina were:

1. Sa'eed ibn al-Musayyab
2. Urwa ibn Az-Zubayr
3. Abu Bakr ibn Abdur Rahmaan
4. Al-Qaasim ibn Muhammad ibn Abi Bakr
5. Ubaydullah ibn Abdullah ibn Utba ibn Mas'ud
6. Sulayman ibn Yasar, and
7. Khaarija ibn Zayd bin Thaabit – may Allah be pleased with all of them.

THE FUNDAMENTAL PRINCIPLES OF THE FIQH OF IMAM MAALIK BIN ANAS ﵁

Imam Maalik ﵁ did not record the fundamental principles on which he based his school – resembling the manner of Imam Abu Hanifa; but not his student – Imam Shaafi' who recorded the principles through which he derived his conclusions. However, there are indications from his verdicts about the principles which he utilised. Al-Qarafi has listed eleven principles of the *Maaliki fiqh*: Qur'an, *Sunnah*, statements of the Companions, consensus of the people of Madina [*ijma ahl al-Madina*], analogy [*qiyaas*], *masaalih mursalah* [consideration of public interest], *urf* [custom], *aadat* [common usage], *Sadd adh-dharaai* [blocking the means], *istishaab* [presumption of continuity] and *istihsaan* [discretion].

THE QUR'AN

Imam Maalik considered the Qur'an as the source of the entire *Shari'ah* and viewed the *Sunnah* to be its exposition. He did not debate anything with regards to the Qur'an. He did not delve into variants when it came to different shades of meaning of the verses of the Book. He did not consider the Qur'an to be something that needs to be debated upon. Yes, the *Maaliki fiqh* did distinguish between different forms of texts in the Holy Qur'an. Rulings are taken from the Book of Allah but not all texts are same as regards to whether one may derive rulings from them. The *Maaliki fiqh* states that there is a difference between explicit text [*nass*] and apparent text [*zaahir*]. Here Imam Shaafi' ﵁ did not mention this difference in his *fiqh* for he utilised both types of texts interchangeably. The *Maaliki fiqh*

views the explicit text to be stronger than the apparent. An apparent text requires further exposition from the *Sunnah*.

THE SUNNAH

There are three ways in which the *Sunnah* clarifies the Holy Qur’an. Firstly, it confirms the judgements of the Holy Qur’an and adds nothing new to it whatsoever. Secondly, the *Sunnah* provides the light on the intention of the Holy Qur’an in which it details the words of the Qur’an. For example, the Qur’an has indicated the obligation of *Salaah* but we find the details of *Salaah* as to its number of units, the methodology and its objectives from the *Sunnah*. Thirdly, the *Sunnah* complements the Qur’an in judgements of which the Qur’an is silent; for example, the inheritance of the grandmother which is not mentioned in the Qur’an but in the *Sunnah*.

According to Imam Maalik, if the *Sunnah* is not supported by consensus, the practice of the people of Madinah or analogy; then the text [of the Qur’an] must be taken literally and any *Sunnah* which contradicts that literal text of the Qur’an is rejected – if it is transmitted with a single *Hadith*. When it comes to multiple transmissions [*mutawaatir*], the *Sunnah* can be raised to the level of abrogating the verses of the Qur’an. Hence, Imam Maalik ﵁ preferred the apparent text over the single *Hadith* – if it was not reinforced.

OPINION

It is usually stated that Imam Maalik ﵁ was the scholar of *hadith* and Imam Abu Hanifa ﵁ was the scholar of opinion [*ray*]; but this is not true. Actually, we find that Imam Maalik

ﷺ has utilised this venue of opinions extensively in his *fiqh*. His contemporaries used to consider him the *faqih* of opinion. He used to study the questions of *fiqh* with expertise and he could compare them against the measure of people's best interest and by means of analogy, and study the *hadith* of the Prophet ﷺ in light of these things. Thereafter, he would compare all of this to the general text of the Holy Qur'an. His use of opinion is clearly shown by two factors: firstly, the extensive numbers of questions in dealing with which he relied on opinion; whether it was reached by analogy or *istihsaan, masaalih mursala,* or by *Sadh adh-dharaai'*. The methods by which Imam Maalik ؓ concludes on opinions are more numerous than others and this alone shows the importance of opinions in his *fiqh*. Secondly, whenever there was a conflict between a single narration [*Khabr e Waahid*] and analogy – we find that many Imam Maalik ؓ conformed to follow analogy, which essentially is derived from opinions. This practice does not deny him being the Imam of the *Sunnah* but it actually enhances his prestige; and this transpires with his meticulous study of every *hadith*, and its investigation with other methodologies, and thereafter he weighed all of them with tools of his diligence in order to come up with a reliable and relevant conclusion.

FATAAWA OF THE COMPANIONS

Imam Maalik's *fiqh* is mostly saturated with the verdicts of the Companions because he knew that the *Sunnah* is found within the Companions and the people of Madina. His book, Al-*Muwattaa*, comprises of the *Hadith* and the verdicts of the Companions. Sometimes Imam Maalik ؓ would prefer the statement of the Companion over some *Hadiths*, after

comparing them – and this was only because he accepted the statements to be part of the *Sunnah.* Sometimes, there were certain aspects of the opinion, the practice of the people of Madinah, statements of the people or the general bases of the *Shari'ah*, which made the statement of the Companion preferable to an individual *hadith*. We will see the very same vigour and ethics in the *fiqh* of Imam Ahmad bin Hambal – may Allah be pleased with him.

FATAAWA OF THE FOLLOWERS

It is clear that Imam Maalik ﷺ did not consider the statements of the Followers to occupy the same position in the *Sunnah* as those of the Companions; but he sometimes did take their statements due to their piety and righteousness. This included the seven jurists of Madina as most of them were from the *Taabi'oon*.

CONSENSUS [*IJMA'*]

Imam Maalik ﷺ is the one Imam from the four who used consensus frequently as evidence; as one will see the words such as *'the generally agreed upon way of doing things'* in his *Al-Muwattaa*. He also provides the definition of this in *Al-Muwattaa*:

> "As for the consensus, it is something that the people of fiqh and knowledge agree upon without dispute. This is the agreement of the people of this community

who contract agreements in any matter. By agreement, we mean agreement in word, action or belief"[22]

THE PRACTICE OF THE PEOPLE OF MADINA

Imam Maalik ﵁ relied on the practice of people of Madina as a valid source of the *Shari'ah*. Sometimes at the lack of text and authority; Imam Maalik ﵁ would utilise the practice of the people of Madina as evidence. His teachers and many other jurists, who were before him, also followed this way of obtaining evidence.

ANALOGY [*QIYAAS*]

Imam Maalik ﵁ issued verdicts for over fifty years; and an intelligent and sensible jurist is well aware of the change that transpires with time. It goes beyond the scope of simply narrating a verse or a *hadith* in conjunction with the changing tides of time; therefore the tool of analogy becomes a pivotal aspect in determining the correct and most reliable way, in the light of the Qur'an and *Sunnah*, of a solution. Imam Maalik ﵁ used to make analogies based judgements derived directly from the text of the Qur'an and the *hadith* of the Prophet ﷺ. He also used the consensus and the practice of the people of Madinah as a basis of deriving analogies from them. The Maaliki jurists use analogy but they always subject it to the principle of bringing about the best interests of people and averting harm from them. If their analogy is correct they will not proceed to implement it if that would prevent benefit or entail harm. They

[22] Al-Muwatta, Malik bin Anas

relax the general rules and leave them for the sake of specific benefits. This is part of *Istihsaan*.

DISCRETION [*ISTIHSAAN*]

As we said above; Imam Maalik رضي الله عنه would only try and implement analogy if there was a general or partial benefit to the people. He would make sure there was no harm in its application; otherwise he left it. It was his basic principle that analogy is subject to benefit. *Istihsaan* is a relaxation of a universal principle for a temporary principle. For example, taking loans is usury in terms of general principles; but it will bring about difficulty amongst the people – therefore it is permissible out of discretion. This method of *Istihsaan* is most often used when the application of strict analogy would necessarily entail distress. The Hanafi school also applies *istihsaan* but the method differs. Further refinement of *istihsaan* lead Imam Maalik رضي الله عنه to a principle called *masaalih mursala*.

CONSIDERATIONS OF PUBLIC INTEREST [*Masaalih Mursala*]

The legality of customs and traditions in the sight of *Shari'ah* is whether or not they are beneficial in real terms. Islamic *fiqh* in its entirety is based on the best interests of the community. The *Shari'ah* has planned for the best interests of the people and things which are prohibited in *Shari'ah* also shares the same objective. Therefore, any action which shares and coincides with the goal of the *Shari'ah* will be permissible and recommended. There are five goals and those are agreed upon by everyone: preserving life, sanity, property, progeny and honour. Imam Maalik رضي الله عنه found the Companions applying the

Masaalih Mursala in their times whereas it was not the case in the time of the Prophet of Allah ﷺ. For example, the compilation of the Holy Qur'an in a book form for the immense benefit for the community, the agreement of 80 lashes for wine-drinking whereas it was 40 lashes before, the introduction of punishing anyone who had indirectly participated in a murder of an individual whereas it was only the killer who was sentenced to death. All of these examples are but a few from many which were introduced later on for the objective of preserving the *Shari'ah* from any loopholes and thus it becomes a great benefit for the community.

THE PRINCIPLE OF ADH-DHARA'I [MEANS]

Imam Maalik رضي الله عنه and Imam Ahmad رضي الله عنه resembled each other in this principle closely. *Sadd adh-Dharai* – blocking the means – entails making the means to what is forbidden also forbidden. In contrast, *Fath adh-Dharai* – facilitating the means – is to make the means obligatory to what is obligatory. For example; since adultery is unlawful, looking at the private parts of a stranger is also unlawful. Since the *Jumuah* prayer is an obligation, to proceed for it is also an obligation and leaving off trade is also an obligation. This method is a way to cover up any loop holes that may apparently arise from one way or another.

THE PRICINPLE OF COMMON USAGE [*Aadat*] AND CUSTOM [*Urf*]

Common usage is an action which is repeatedly performed by individuals and communities; and custom a matter on which the community of people agree in the course of their daily life. Customs may become common usage and hence they are

interchangeable. We find that the *Maalikis* abandon analogy when custom opposes it. It makes the general specific and qualifies the unqualified. This is the way of the *Maalikis*.

The reason for this is that a custom necessarily entails people's familiarity with a matter and therefore it will receive general acceptance; whereas opposing this may lead to distress and discord. Hence, when a custom is not a sin and it is respected by the community; honouring it will strengthen the bond which draws people together. Imam Maalik ﵁ has applied this method greater than the Hanafis because it has the basis with the considerations of the public interest and the practice of the community.

CONCLUSION

The *fiqh* of Imam Maalik ﵁ is indeed very famous and allows many openings and laxation when it comes to public interest – as long as it does not confront the Qur'an and *Sunnah*. We find that the majority of the northern African regions and some parts of the Middle East, the West [America] and Europe are adherents of the *Maaliki fiqh*. The *fiqh* of Imam Maalik ﵁ is perfect hybrid of analogy and hadith where one will find remarkable balance in all of its rulings. The term 'natural disposition' comes to one's mind when studying the *Maaliki fiqh* for it places great emphasis on things which were found naturally in Al-Madinah.

“If the scholars of hadith speak, it is in the language of al-Shaafi’.”

[Imam Muhammad Shaybaani in praise of his student, Imam Shaafi’]

Imam Ash-Shaafi'

ﷺ

Muhammad ibn Idris ibn Al-Abbas ibn Uthmaan ibn Shaafi' ibn Ubayd ibn Abu Yazid ibn Abdul Mutallib; also known as Ash-Shaafi' is the most well-known Imam of *fiqh* after Imam Abu Hanifa ﷺ. He was born in Gaza, Palestine [part of *As-Shaam*] in the year 150 AH – the very year in which Imam Abu Hanifa died. Imam Shaafi' ﷺ was a Qurayshi and therefore a descendent of the Banu Haashim family of the Prophet ﷺ. He is the only Imam from the four whose lineage reaches the Prophet ﷺ. He grew up in a family that was poverty-stricken and displaced in Palestine. He was an orphan who grew up in trying circumstances. This allowed him to see the hidden elements within the community and its emotions. It allowed him, later on as we shall see, to reform the community as a whole. He was intensely intelligent and his memory was exceptionally prodigious. This was observed when he was studying his basics. He memorised the Qur'an and many *hadith* with supernatural speeds. The *fiqh* of Imam Ash-Shaafi' ﷺ was the complete paradigm of Islamic *fiqh* at the time when it flowered and its development was complete. His *fiqh* unites the people of opinion and the people of *hadith* in a stable manner. He was the first Imam to formulate the *Sunnah* and to lay down rules and criteria for its legal use, to specify the methods for understanding the Book and the *Sunnah*.

He was the student of Imam Maalik ﷺ and Imam Muhammad Ash-Shaybaani ﷺ – the student of Imam Abu Hanifa; meanwhile he was the teacher of Imam Ahmad bin Hambal ﷺ. These relationships allowed Imam Shaafi' ﷺ to formulate his *fiqh* in which there was a touch of the *fiqh* of other Imams. This

is how he managed to bring together opinion and *hadith* into a unified frame of context. He died in Egypt after being fatally wounded by some fanatics of *Maaliki fiqh*. He remained unwell from then onwards and died in Cairo in the year 204 at the age of 54. May Allah have mercy on him and forgive us through his blessings.

HIS PATH TO FIQH

He and his mother had moved to Makkah Al-Mukarramah and it was in this holy city that Imam Shaafi' ﵁ attained expertise in knowledge. At that time he had heard of Imam Maalik ﵁ whose fame and greatness was attested throughout the lands of Islam. He decided to meet the Imam only after having studied his *Muwattaa*. This was the point when Imam Shaafi's inclination towards *fiqh* peaked. When Imam Shaafi' ﵁ reached the city of Madina to meet the Imam, Imam Maalik ﵁ said to him,

> "O Muhammad, fear Allah and avoid acts of disobedience. You will be a man of great standing. Allah Almighty has cast light into your heart, so do not extinguish it through disobedience"[23]

When Imam Maalik ﵁ died, Imam Shaafi' ﵁ was a follower of the *Maaliki* school where he would defend and debate with people of Iraq, in Baghdad. But this soon changed when he found out that some people were associating a position to Imam Maalik ﵁ greater than the words of the Messenger of Allah ﷺ. When scholars would say a *hadith*; some people would reply by saying, '*But Imam Maalik said…'* Imam Shaafi' ﵁

[23] Four Imams, Abu Zahra Misri

considered this dangerous because people were contradicting the *hadiths* of the Messenger of Allah ﷺ with people whose statements may be right or wrong. It was not proper for anyone to accept anyone's opinion in preference to *hadith.* Hence Imam Shaafi' was called '*the Helper of Hadith*' by his contemporaries. This was the reason which led Imam Shaafi' to criticise some of the views of Imam Maalik – his teacher – and state that they were wrong, so that people would know that Imam Maalik ﷺ was a mortal who could be right or wrong.

Previously, Imam Shaafi' ﷺ had some differing views to Imam Maalik, for he saw errors in his *fiqh*, but he did not criticise them out of respect for him. But a time had now arrived where he had to choose loyalty to the *Sunnah* or to his teacher. Hence, he chose the former for the sake of Allah. This was enough to spark debates and a host of arguments burst around Imam Shaafi' ﷺ which eventually led him to incur physical abuse from the fanatics.

HIS BOOKS

Imam Shaafi' ﷺ was a proficient writer. Of what is transmitted from the historians we find that he had written books like *Al-Risaala, Kitaab As-Sunan, Al-Mabsut, Kitaab Al Umm, 'Al-Amali al-Kubra, Al-Imla as-Saghir* and *Al Musnad*. All of these books have *hadith* and principles detailed with much elaboration on the *fiqh* of Imam Shaafi'.

THE PRINCIPLES OF THE FIQH OF ASH-SHAAFI'

Imam Shaafi' ﷺ set out the principles of *fiqh* because the jurists before him had exercised *ijtihaad* [independent Islamic deduction] without having defined the limits to the way they

deduced the rulings. Imam Shaafi' ﵁ also divided and subdivided the categories and classes of knowledge which was not done previously. This set of classifications enabled him to formulate the *fiqh* in a way that had clarity on its limitations.

THE QUR'AN

Imam Ash-Shaafi' ﵁ considers the Book and the established *Sunnah* to have equal rank in the *Shari'ah* – because all other sources of deduction are based on them; and derived from their essence if not taken from their text. It should be noted that the *Sunnah* which occupies the same rank as the Book is that which is mass transmitted, definitive and established. Single chain narrations [*Khabr e Waahid*] can never occupy the same pedestal as that of a multiple chain narration [*Mutawaatir*] – let alone the verses of the Qur'an.

The Qur'an, in the light of expressions, has two categories of verses; the general [*aam*] and the particular [*khaas*]. As for the verses of the Qur'an; Imam Shaafi' ﵁ divides them into three expressions: apparent general expression by which the general is implied, apparent general expression by which the general is implied but the particular is also included, and the apparent general expression by which only the particular is implied.

THE SUNNAH

Imam Shaafi' ﵁ was an erudite scholar of the *Sunnah* and he considered this to be at equal rank as that of the Qur'an – because the Qur'an is the Book and the *Sunnah* is its exposition. Moreover, it is transmitted by the same source – the Messenger of Allah ﷺ. Therefore, in his time, Imam Shaafi' ﵁ faced three types of people who had different views on the use of *Sunnah*

in the legal system of Islam. The first group denied the use of the *Sunnah* to establish any rule or law of Islam for they observed that everything that is in the Qur'an is clear and definite. One does not need anything more than the Qur'an which may be construed with errors of humans – such as the narrations of *hadith*. They objected that it is not with definite stance that one may be able say that the Messenger of Allah ﷺ said this and that – because the transmission of the *hadith* have men who may err or forget.

The second group also does not follow the *Sunnah* unless it is in reference to something contained in the Qur'an. They hold the position that the *Sunnah* is acceptable if it provides further support for what is in the Qur'an but it cannot add any legislation which is not in the Qur'an.

The third group reject the use of *Khabr e Waahid* [single chain *hadith*] as authoritative evidence. They only take that which is mass transmitted [*mutawaatir*] or those which are well known [*mashoor*]. Therefore, they only accept the general and unspecific traditions.

Imam Shaafi' ﷺ did not agree with either group for he knew that the *Sunnah* has the ability to establish laws of the *Shari'ah* and may abrogate some of the verses of the Qur'an. In reply to these three views, Imam Shaafi' ﷺ presented five proofs for his stance.

1. Allah Almighty has established belief of Himself with His Messenger ﷺ. And belief in the Messenger ﷺ requires one to follow his words and actions. Therefore it is mandatory to consider the *Sunnah* as a source of the *Shari'ah*.

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا الَّذِي لَهُ مُلْكُ السَّمَاوَاتِ
وَالأَرْضِ لا إِلَهَ إِلَّا هُوَ يُحْيِي وَيُمِيتُ فَآمِنُوا بِاللَّهِ وَرَسُولِهِ النَّبِيِّ الأُمِّيِّ الَّذِي
يُؤْمِنُ بِاللَّهِ وَكَلِمَاتِهِ وَاتَّبِعُوهُ لَعَلَّكُمْ تَهْتَدُونَ

"Say [O Beloved Muhammad ﷺ to them]: 'O people, I am a Messenger of Allah, towards you all – for whom only is the kingdom of the heavens and earth; there is none worthy of worship, except Him – giving life and causing death. Therefore, believe in Allah and His Messenger, the Prophet who is Ummi [taught only by His Creator] and who believes in Allah and His words. [Therefore] obey him [the Prophet] to attain guidance"[24]

Allah Almighty also said,

إِنَّمَا الْمُؤْمِنُونَ الَّذِينَ آمَنُوا بِاللَّهِ وَرَسُولِهِ وَإِذَا كَانُوا مَعَهُ عَلَى أَمْرٍ جَامِعٍ
لَمْ يَذْهَبُوا حَتَّى يَسْتَأْذِنُوهُ

"The believers are those who believe in Allah and His Messenger and who, when they are with him on a matter of common concern, do not leave until they have asked him for permission…"[25]

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[24] Holy Qur'an [7:158]
[25] Holy Qur'an, [24:62]

2. Allah mentions in His Book that the Messenger ﷺ teaches people the Book and Wisdom,

هُوَ الَّذِي بَعَثَ فِي الْأُمِّيِّينَ رَسُولًا مِّنْهُمْ يَتْلُو عَلَيْهِمْ آيَاتِهِ وَيُزَكِّيهِمْ
وَيُعَلِّمُهُمُ الْكِتَابَ وَالْحِكْمَةَ وَإِنْ كَانُوا مِنْ قَبْلُ لَفِي ضَلَالٍ مُّبِينٍ

"It is He who has sent among the unlettered people a Messenger from themselves, who recites His verses to them and purifies them, and bestows them the knowledge of the Book and Wisdom; and indeed before this, they were in plain error"[26]

The word 'wisdom' in this context only denotes the *Sunnah* of the Messenger of Allah ﷺ.

3. Allah Almighty has obliged the believers to obey and follow His Prophet ﷺ. Therefore, the *Sunnah* of the Prophet ﷺ has authority in the *Shari'ah* because Allah explicitly states in the Qur'an that is mandatory to obey him, and juxtaposed the obedience of the Prophet ﷺ with His Obedience.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ
تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ
وَالْيَوْمِ الْآخِرِ ذَٰلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

"O you who believe! Obey Allah and obey His Messenger and those in command among you. If you

[26] Holy Qur'an, [62:02]

have a dispute about anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day – this better and has the best outcome"[27]

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَن يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَن يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُّبِينًا

"When Allah and His Messenger have decided a decree, it is not for any believing man or believing woman to have a choice about it. Anyone who disobeys Allah and His Messenger is clearly misguided"[28]

4. The fourth evidence is that Allah Almighty did not make the calling of the Messenger ﷺ to judge between the people the same as their calling of themselves; nor opposing him is like opposing other people. Anyone who opposes him is not a Muslim. Allah ﷻ informs us that that being summoned to the Messenger ﷺ, so that he may judge between us – is like being summoned to Allah ﷻ for His Judgement. When we submit to the judgement of the Messenger of Allah ﷺ; we are submitting to the Judgement of Allah Almighty.

[27] Holy Qur'an, [04:59]
[28] Holy Qur'an, [33:36]

لَا تَجْعَلُوا دُعَاءَ الرَّسُولِ بَيْنَكُمْ كَدُعَاءِ بَعْضِكُمْ بَعْضًا قَدْ يَعْلَمُ اللَّهُ
الَّذِينَ يَتَسَلَّلُونَ مِنْكُمْ لِوَاذًا فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ
تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ

"Do not make the summoning of the Messenger the same as your summoning of one another. Allah knows those of you who sneak away. Those who oppose his command should beware of a testing trail coming to them or painful punishment striking them"[29]

وَإِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ لِيَحْكُمَ بَيْنَهُمْ إِذَا فَرِيقٌ مِّنْهُمْ مُّعْرِضُونَ

"When they are summoned to Allah and His Messenger so that he may judge between them, a group of them turn away"[30]

5. The fifth evidence is that Allah Almighty commanded His Messenger ﷺ to convey His Message, to elucidate the *Shari'ah* and to follow His Revelation. This is achieved by reciting and expounding the Qur'an. Therefore the *Shari'ah* consists of the Qur'an and the words of the Prophet ﷺ.

ثُمَّ جَعَلْنَاكَ عَلَى شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا
يَعْلَمُونَ

[29] Holy Qur'an, [24:63]
[30] Holy Qur'an, [24:48]

"We then placed you [O Beloved Muhammad ﷺ] on the clear path of Command; therefore continue following it and do not listen to the desires of the ignorant"[31]

Hence, Imam Shaafi' – may Allah be pleased with him – designated five aspects of the relationship between the Qur'an and the *Sunnah*:

1. The *Sunnah* elucidates what is undefined in the Qur'an such as the obligations which are unspecified. The *Sunnah* will provide the details and times of them.
2. The *Sunnah* shows when the general is meant to be general in the Qur'an and when Allah means a particular category by a general expression.
3. The *Sunnah* adds, by Divine inspiration, rulings to obligations confirmed by texts in the Qur'an which are a consequence of them or connected to them.
4. The *Sunnah* conveys rulings which are not in the Qur'an and are not additions to the Qur'anic texts.
5. The *Sunnah* further explains what is abrogating and abrogated in the Qur'an.

CONSENSUS [*ijma*]

Imam Shaafi' رضي الله عنه confirmed that the consensus furnishes an authoritative proof and confirms that its rank is after the Qur'an and the *Sunnah*. He placed *ijma* before *qiyaas* for he said that is not lawful to follow analogy when a sound tradition exists. His view of the consensus is that the scholars of the time all agree on a matter such as the noon Prayers consisting of four

[31] Holy Qur'an, [45:18]

obligatory units, wine being prohibited and so forth. Here Imam Shaafi’ رضي الله عنه rejected the consensus, as defined by his teacher, to be that of the people of Madina. Imam Shaafi’ رضي الله عنه viewed that the consensus may only arise from the scholars of all the land, not only of Madina, because they are better aware of what is lawful and unlawful. Imam Shaafi’ رضي الله عنه placed single chain narrations before the consensus – unless it was clear that the consensus was based on transmission and a group of people related it from a group of people back to the Messenger of Allah ﷺ.

Imam Shaafi’ رضي الله عنه rejected the Hanafi view of accepting tacit consensus, which is when one of the people of *ijtihaad* takes an opinion which is known in his time and to which no one objects. Imam Shaafi’ رضي الله عنه did not accept this to be consensus. For him, consensus is stipulated when every scholar provides an opinion and they all agree on the matter.

ANALOGY

He was the first to formulate its rules and explain its basis of sound opinion and unsound opinion. The jurists before him made use of opinion without explaining its limits and its basis. Furthermore, he elucidated the preconditions which a *faqih* must have when making analogy. In his discussion of analogy, one of the major premises was that all events and occurrences must be subject to the ruling in Islam. Since *Shari’ah* embraces all things, there must be a ruling on every occurrence, either from a text or from an indication or evidence which the seeker can find. For Imam Shaafi’, *ijtihaad* [independent deduction] on points for which there is no text or consensus can only be made through analogy.

INVALIDATION OF ISTIHSAAN

Imam Shaafi' ﵁ said in his book, 'the invalidation of Istihsaan',

> "All that is described as I have mentioned regarding the ruling of Allah, then the ruling of the Messenger of Allah, and then the judgement of the community of Muslims, is evidence. No judge or mufti is permitted or give fatwa unless it is based on a binding report: that is, the Book, then the Sunnah, or what the people of knowledge said and is not disputed, or an analogy based on one or more of these. There is no fatwa by istihsaan [discretion] since istihsaan is not mandatory nor does it fall into one of these categories"[32]

This paragraph shows the stance of Imam Shaafi' about discretion; for he rejected it because *istihsaan* is not based on evidence or an indication of a text, but it comes from the preference of the *mujtahid*. The view of Imam Shaafi' ﵁ is that it is false and has no connection with the *Shari'ah*.

STATEMENTS OF THE COMPANIONS

Imam Shaafi' ﵁ placed the statements of the Companions in the fourth rank after the Book, *Sunnah* and the consensus. He accepted the statement of a Companion, if it was not opposed, and selected between them when there were conflicting statements. However, he did not consider the statements of the *Tabi'oon* to be evidence in themselves.

[32] Four Imams, Abu Zahra Misri

CONCLUSION

His explanation of the *Shari'ah*, his extrapolation of its rulings and his deduction of its principles indicate the outwards and apparent observations of the texts. This is why he rejected *istihsaan* because it is dependent on the spirit of the scholar and his perception. In his view, he took a more literal and objective approach to texts – indicating the outward matters only. For him, the inner aspects are not to be delved by the judge as this is between the individual and His Creator. His *fiqh* was the very first in terms of laying down its protocols and clarifying the limitations of the principles, thus it is codified. If Imam Shaafi' ﵁ had lived longer, the Shaafi' *fiqh* would have developed further and it may have superseded the Hanafi population.

"I left Baghdad and I did not leave behind me someone more pious, cautious (regarding doubtful matters), understanding (in fiqh) and knowledgeable than Ahmad."

[Imam Shaafi' in praise of Imam Ahmad bin Hambal]

Imam Ahmad bin Hambal

﵁

Ahmad ibn Muhammad ibn Hambal ibn Hilal Ash-Shaybaani Al-Baghdadi was born in Rabi' al-Awwal in 164 AH and passed away in Rabi' al-Awwal in 241 AH. He was born in Baghdad and passed away in Baghdad. He was an Arab from both his mother and father's side. He was blessed with five qualities which enabled his personality to overshadow his contemporaries: noble lineage, orphan-hood from an early age, self-reliance, self-control and experience of adversity. He was also in the state of poverty which prevented him from becoming arrogant through indulgence. His fear of Allah was awesome and his presence inside the intellectual circles was stunning. He studied in Baghdad, which was at the pinnacle of knowledge in his time, and devoted himself to sit in the circles of the scholars of *fiqh*, *hadith* and *tasawwuf*. However, in the beginning, Imam Ahmad ﵁ associated himself with the *hadith* scholars more than the *fiqh* scholars. His first teacher was Qadhi Abu Yusuf ﵁ – the student of Imam Abu Hanifa ﵁ – and Imam Ahmad ﵁ recorded *hadith* transmissions from him. At the same time, he frequented the people of *hadith*. We can say that his inclination of *hadith* was primary but he did not cut himself off from the rulings and views in *fiqh* from the scholars of Iraq.

Four Caliphs tried him in various ways but he emerged from all these trials as a righteous man. Al-Ma'moon shackled him and subjected him to great hardship. Al-Mu'tasim tested him with imprisonment and flogging. Al-Wathiq tested him with a ban and constriction. These hardships did not dent the convictions of Imam Ahmad ﵁. Thereafter, Al-Mutawakkil tested him with luxury of the world; at which Imam Ahmad ﵁ rejected them

by making himself go hungry and not taking anything whose unlawfulness was uncertain. He was very astute and scrupulous. His view that the Qur’an was not a creation but a Quality of Allah separated him from the government officials who had taken over the *Mu’tazila* position of doctrine. His efficacy and efficiency in explaining and propagating the doctrine of the *Sunnah* lead his contemporaries to call him the Imam of *Ahl as-Sunnah*.

Imam Ahmad ﵁ was that jurist who was dominated by righteousness to the point that his very righteousness prevented him from following through his *fiqh* to the furthest extent. He hesitated when others went ahead and wavered when others resolved. He paused over the meaning when others spoke. He was silent about *fataawa* when others rushed to give them. That is why his inclination to *hadith* predominated over his *fiqh* – leading some scholars to reckon him as a *hadith* scholar instead of a *faqih*. This is because there is no book on *fiqh* attributed to him except the *Musnad* – which is the well-known compendium of *hadith,* not *fiqh*.

If someone is absorbed in the study of *hadith* and specialises in it, he is a *Muhaddith*. If someone gives many *fatwas* and is absorbed in that, he is a *faqih*. We do not find anyone who combines them both equally except for Imam Maalik ibn Anas ﵁, who was unique in that respect. In reality, Imam Ahmad ﵁ was a *faqih* and a *Muhaddith* even though we admit that his inclination to *hadith* was stronger. He came to be known as the Imam of *fiqh* after his death when his students collected his statements, rulings and opinions – forming a legal compilation attributed to him.

THE UNIQUENESS OF THE FIQH OF IMAM AHMAD ﵁

Imam Ahmad's *fiqh* is seen to possess two areas which are unique in its respect and maturity than the *fiqh* of other Imams. Firstly, his *fiqh* is one in which *hadith* is manifested in its strongest and clearest form. He preferred opinions of the Companions. When there were two opinions among the Companions he chose between them. Sometimes he opted for one, but sometimes he did not consider that he had the right to choose between the opinions of those noble personalities without a justifying text since that would involve contradicting one of them. Where there was no text, or *hadith* on a matter from the Companions, he exercised *ijtihaad*.

Secondly, in the area of social transactions, when there was no text or *hadith* or a possible analogy; he let the matter rest on its basic permissibility. That is why in the field of contracts and pre-conditions, his is the Islamic *fiqh* with the widest and most extensive scope because it considers contracts and preconditions to be basically sound unless there is clear evidence that they are invalid. No evidence of validity is necessary. Evidence is required to demonstrate invalidity.

THE MUSNAD

This is the voluminous collection of *hadith* which Imam Ahmad ﵁ transmitted and he travelled to many places to collect it. He began to compile it during his youth; the time when he began the quest for knowledge at the age of 16. He disliked writing, following the way of *Salaf* – and which explains the lack of books of *fiqh* from Imam Ahmad – but he loved to write

the *hadith* of the Messenger of Allah ﷺ. His son asked him this question, '*Why do you dislike writing books when you have compiled the Musnad?'* Imam Ahmad ؓ replied, *'I created this book as a model for people to consult when they disagree about a Sunnah from the Messenger of Allah ﷺ.'* This compilation transpired throughout his life until he saw his end approaching. Then he gathered his sons and students to show and dictated to them as to what he has gathered. It was his son, Abdullah ibn Ahmad bin Hambal, who transmitted the *Musnad* to others and he gathered all the written work of the *Musnad* and gathered them, subdivided them under the heading of the names of the Companions.

TRANSMISSION OF HAMBALI FIQH

As we come to know that Imam Ahmad ؓ did not like to write down his opinions in the field of *fiqh*, therefore the vast number of things narrated, from him are verbal transmissions. His students and companions would ask him for answers to certain question for which he would narrate to them a *hadith*, or a statement of the Companion. If nothing existed then he would give them from his own *ijtihaad*. He followed Imam Maalik ؓ in the stance when he would say at many times 'I do not know' to questions. Those who were well known in transmitting his *fiqh* are as follows:

1. Salih ibn Ahmad bin Hambal
2. Abdullah ibn Ahmad bin Hambal
3. Ahmad ibn Muhammad ibn Hani Al-Athram
4. Abdul Malik ibn Abdul Hamid Mahran Al-Maymuni
5. Ahmad ibn Muhammad ibn Al-Hajjaj Al-Marwazi
6. Harb ibn Ismail al-Hanzali al-Kirmani

7. Ibrahim ibn Ishaq al-Harbi
8. Ahmad ibn Muhammad Abu Bakr Al-Khallal

It was Ahmad Al-Khallal who collated all the material of the Hambali *fiqh* and he travelled to all those listed above to hear from and in this way the Hambali *fiqh* was disseminated. After collection, he taught them to his students in Baghdad at the Mahdi mosque – which became famous for the circle of the Hambalis. Al-Khallal transmitted it as a legal collection in about twenty volumes – called *The Great Collection*.

THE PRINCIPLES OF THE HAMBALI FIQH

The Hambali *fiqh* is based on the Qur'an and *Sunnah*, consensus, *fatwas* of the Companions, analogy, *istihshab*, *masaalih mursala*, and *dhara'i*.

THE BOOK

Imam Ahmad ﵁ held the same view as his teacher, Imam Shaafi', about the Qur'an and *Sunnah;* being on the same level in respect of clarification. Imam Ahmad ﵁ was adamant in considering the *Sunnah* of the Prophet ﷺ a sound explanation of the noble Qur'an. He did not believe that there could be any conflict between the literal text of the Qur'an and the *Sunnah* – because the *Sunnah* clarifies it and explains the *fiqh* and rulings contained within the Qur'an.

THE SUNNAH

This is the second half of the first principle of the Hambali *fiqh* since Imam Ahmad ﵁ had the same view of Imam Shaafi' ﵁

about the status of the Qur'an and *Sunnah* as primary evidence. Nevertheless, it should be understood that the *Sunnah* is not all the same in respect of the authority of its chains of transmission and it is necessary to clarify their relative status and the amount of deduction capability in each of them. The jurists have divided the *hadith* into four categories with regards to their chain of transmission: *mutawaatir, mashoor, khabr e waahid* and the *mursal hadith* whose chain is incomplete.

The *mutawaatir hadith* are related by large number of people and in so many disparate places that it is impossible to imagine them to be untrue. This type of *hadith* is incontrovertible knowledge.

The *mashoor hadith* is that well known tradition which the second or third generation accepted and which are famous among them, even if they are single chain *hadith* related by only one narrator.

Khabr e Waahid – single chain traditions do not constitute definite evidence but Imam Ahmad bin Hambal ﵀ was imbued with the love of the Messenger of Allah ﷺ. So he was satisfied to accept anything which ascribed to the Prophet ﷺ.

The *mursal hadith* can mean two things: one is a *hadith* whose chain stops at a *Ta'abi* without mentioning the Companion in between the *Ta'abi* and the Messenger ﷺ; and the second is that *hadith* whose chain does not connect directly and continuously to the Prophet ﷺ. The jurists have various views about them.

Imam Malik ﵁ and Imam Abu Hanifa ﵁ accepted *mursal hadith* to the extent which they thought was correct. They gave it the status of *khabr e waahid*. However, Imam Shaafi' ﵁ did not do this and though he accepted *mursal hadith* but he applied certain conditions for doing so. Imam Ahmad bin Hambal ﵁ accepted the *mursal hadith* but he placed them at rank after the *fatwas* of the Companions; and placing them in par with weak *hadith*. Whenever there was nothing, Imam Ahmad used the *mursal hadith*, as he accepted the weak *hadith*, because he preferred using them for making rulings instead of using analogy or opinion – which he used as a last resort. Imam Ahmad ﵁ did not report from liars but only from reliable people of known integrity, even if their version of the *hadith* was not completely accurate. But if he found someone more reliable, he took their version. Imam Ahmad ﵁ put weak *hadith* before analogy. He said to his son, *"My son, I do not oppose a weak hadith unless there is something definite to refute it."*

THE FATWAS OF THE COMPANIONS

Imam Ahmad ﵁ considered the verdicts of the Companions second to the sound *hadith* of the Prophet ﷺ and before the *mursal* and weak reports. He placed the verdicts of the Companions into two categories: those about which there was no known disagreement and those about which they disagreed. With the first category he took the position of the Companions but did not call it a consensus. As for the second category, Imam Ahmad ﵁ took note of the different positions and considered them all to be his own – so that he would have two or three statements according to the various positions. He did this to avoid preferring his own opinion to that of any of the

Companions as they all had light and guidance from the Messenger of Allah ﷺ.

It is also clear, that if Imam Ahmad ﵀ knew the opinions of the rightly-guided Caliphs he chose them first. If he did not know them he then chose the opinions closest to the Book of Allah and the *Sunnah*. If none was close in any way, he gave two positions on the matter. Any *fatwa* which one of the Companions gave will be based on one of the six foundations:

1. He heard it himself directly from the Messenger of Allah ﷺ
2. He heard it from someone else who heard it
3. He understood it from a verse of the Book of Allah in a manner unknown to us
4. It is something which all the Companions were agreed upon but only the statement of the one who gave the *fatwa* has been transmitted to us
5. He understood it through his complete knowledge of the language and what the phrase indicates, in a manner to which he had access and we do not, or by direct knowledge of the actual circumstances which were being addressed; or by the sum of things which he understood over the passage of time through seeing the Prophet ﷺ, and witnessing his actions, states and behaviour and listening to his words, knowing his aims and witnessing the arrival of revelation and witnessing its interpretation through action. Because of all this, the Companion was able to understand things which we cannot.
6. If the *fatwa* based on the above five points then it will be authoritative, however there is one more possibility

– and that is the individual understanding of something that the Messenger of Allah ﷺ did not say and the Companion was wrong in his understanding.

FATWA OF THE TAABI'OON

There are conflicting reports about the way of Imam Ahmad ﵁ about the verdicts of the *Taabi*'oon. The Imams before him would accept their views if there was no text found from the primary sources and the verdicts of the Companions. Imam Ahmad ﵁ considered the *fiqh* of the *Taabi'oon* to be a commentary. Therefore, some reports assert that he would accept their *fatwa* if there was no statement from the Companion or a *mursal hadith*.

CONSENSUS [*IJMA*]

Abdullah ibn Ahmad bin Hambal said, 'I heard my father say,

> *"Anything that anyone claims consensus on is a liar. Anyone who claims consensus is a liar. People may disagree without him knowing about it. He should say, 'We do not know of any disagreement between people on this'.*[33]

It is clear from this statement that the view of Imam Ahmad ﵁ on consensus was the same as that of his *Shaykh* – Imam Ash-Shaafi'. He was too scrupulous to establish anything with the name of consensus. He always preferred the sound *hadith* over any consensus because if that was allowed, people would

[33] Four Imams, Abu Zahra Misri

establish consensus on things in which there was never a disagreement about which would be utilised to overrule sound texts.

Yes, Imam Ahmad رضي الله عنه did not completely deny the existence of consensus. He denied the claims of consensus made by some contemporaries of his time – because there was disagreement in the first place. Moreover, Imam Ahmad رضي الله عنه has affirmed that there are questions about which no disagreement is known of and that such questions are accepted when there is no *hadith* on the subject. But he does not accept the claim that that is perfect consensus. He would rather say that he does not know of any disagreement on the matter. This is piety.

Therefore, we can say that the opinion of Imam Ahmad رضي الله عنه on consensus was divided into two categories. The first, which is higher, is the consensus of the Companions; or rather the consensus of everyone on the principle obligations of the *Deen*. Such a consensus is evidence and relies on a text of the Book or sound *Sunnah*. It is strong evidence and there is no sound *hadith* which opposes it because the Companions transmitted the words, actions and decisions of the Prophet ﷺ.

The second category comprises the well-known opinions no one is known to oppose. It is this second type which is generally is called consensus. According to Imam Ahmad, this is less strong than a sound *hadith* but it ranks above analogy – because if there is even a single *faqih* who opposes it then there is no consensus. This will quadruple many folds if there is a contrary text to this consensus.

ANALOGY

In Islamic *fiqh*, analogy means to connect a matter without a text giving a ruling for it to another matter with a text which does give a ruling, on the basis that they both have the same cause. There were two groups of people in the matter of analogy: the first group denied it completely and they followed whatever there was in the text without issuing any verdicts to people. Then there was the other extreme – they used analogy and surpassed the limits of them by comparing things which were dissimilar. Imam Ahmad ﵁ chose the middle path.

ISTISHAB [presumption of continuity]

All the four schools of *fiqh* have used this method in their jurisprudence albeit some have used little whereas others have utilised the most. This quantity of usage is indirectly proportional to the usage of analogy, *istihsaan* and *urf*. Therefore, we find this to be used the least by the Hanafi scholars and most by the Hambali scholars. The definition of this method is that the basic position of the past, which was established by scholars, remains intact in the present and the future; as long as there are no factors which changes it. Some have adopted the meaning that whatever was proven remains proven and whatever was refuted remains refuted unless there is definite evidence to the contrary.

This method is clear that those scholars who wish to broaden their scope of deduction by the use of opinion – they used *istishab* less and whenever they were required to minimise deduction by the use of opinion, they gave more consideration to *istishab*.

MASALIH [Public interest]

The sacred Law of Allah is in keeping with the best interests of people and that those commands of the *Shari'ah* which are connected to behaviour with other people are based on the principle of bringing benefit and preventing harm and corruption. The school of Imam Ahmad ﵁ has used this extensively and thus keeping up with the practice of the *Salaf* [pious predecessors]. He derived this from the rulings of the Companions for example; the idea of compiling the Holy Qur'an in a book form, the increase of lashes to 80 for the punishment of intoxication, the use of capital punishment for all the participants, directly or indirectly, of murder. These examples are but a few from the lives of the Companions as they dictated this for the purpose of the public interest and preventing corruption. Imam Ahmad ﵁ used the same method in passing the ruling of exiling corrupt people, increasing the punishment for daytime drinking of wine in Ramadan and punishing those who curse the Companions.

THE PRINCIPLE OF ADH-DHARA'I [Judgement of the means]

One of the important principles in the *fiqh* of Imam Ahmad – for it was clear that anything that leads a person to fulfil the commandments of Allah is also permissible and that which leads to the performance of the prohibited is also prohibited. For example, the mutual love and brotherhood is commanded by Islam therefore the Prophet of Allah ﷺ has prohibited one to make a marriage proposal when his brother [in Islam] has proposed. Similarly, the disposal of inheritance to its rightful

owners is obligatory hence the bequest of the deceased to an heir is forbidden or denying him as his heir. The position of Imam Ahmad ﷺ in this aspect was similar to Imam Maalik ﷺ. He considered and established the ends, forbade what led to an unlawful end, and confirmed what led to a desirable end. He regarded that as a general principle and applied it to specific questions. For example, he forbade meeting a caravan before it arrived so that it would not lead to a rise in prices for the public and hence to general harm.

CONCLUSION

These are the principles of the Hambali school which the Hambalis ascribe to their Imam. All of them are derived from the *Sunnah* and they come from the single source: *Hadith*. Imam Ahmad ﷺ either obtained a text from the *hadith* and if he did not find a text from the case in hand, he emulated the means used in the *Hadith*, thereby adopting its method. In either case, Imam Ahmad's *fiqh* was based extensively on the way of the *Salaf*. He did not overstep this path or travel by other route. This did not make his *fiqh* rigid and inflexible, but rather fertile and luminous. May Allah allow this way to progress!

RULING OF TAQLEED

After analysing the principles by which the four Imams derived rulings of the sacred law, it can be adjudicated that they did so by the Qur'an and Sunnah being their primary sources. Since these personalities have investigated, deducted, established and developed this science, there is no need to go back to the drawing board to re-do what they have done already. It requires prodigious skills, astute personality and confirmed piety to be a *mujtahid* scholar of the highest calibre. Hence, those who are not *Mujtahideen*, it becomes compulsory for them to adopt one of the four Imams as their guide and follow their rulings and verdicts, so that one may follow the Qur'an and *Sunnah* in its correct interpretations. This is called *Taqleed*. It is in *Sharah Mukhtasar Al-Manaar*,

> "Taqleed is when a person obeys another's opinion or action after hearing it without obtaining its proof in the belief that the person is amongst the people of insight"

Therefore, those who follow the *Mujtahideen* are known as *Muqallideen*. It is compulsory to follow them, for all those who are unable to derive rulings from the Qur'an and Sunnah – with the use of knowledge, because of the following Qur'anic injunctions:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

"O you who believe! Obey Allah and obey the Messenger and those who have authority over you"[34]

[34] Holy Qur'an [4:59]

فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ

"Ask the Learned if you do not know"[35]

وَاتَّبِعْ سَبِيلَ مَنْ أَنَابَ إِلَيَّ ثُمَّ إِلَيَّ مَرْجِعُكُمْ فَأُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ

"And follow the path of the person who is turned towards Me"[36]

وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ

"And had they referred it to the Noble Messenger and to those among them having authority – those among them who are able to deduce – they would certainly learn the truth of the matter from them"[37]

يَوْمَ نَدْعُو كُلَّ أُنَاسٍ بِإِمَامِهِمْ

"That Day on which every congregation will be called with their Imam"[38]

These verses of the Holy Qur'an justify and signify the importance of following the righteous Imams of knowledge in order to follow the sacred Law, appropriately. It must be clarified to the readers that *Taqleed* of the Imams is only permissible in the secondary unclear issues, not in primaries and fundamentals. Imam Raazi states,

> "Taqleed of a person in explicit laws, such as the five daily prayers [are they Fardh or not], the units of

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[35] Holy Qur'an [16:43]
[36] Holy Qur'an [31:15]
[37] Holy Qur'an [4:83]
[38] Holy Qur'an [17:71]

> [Fardh] prayers and so forth; is also not permissible. These are those rules which are proven explicitly from an absolute script of Islamic Law. Therefore, the ruling and books of Imam Abu Hanifa will not be used to substantiate if the prayer is *Fardh* or not. Rather, they are to be substantiated from the Qur'an and Hadith."[39]

Similarly, Imam Ismail Haqqi comments,

> "If we are asked as to how we have accepted the Oneness of Allah, His Messengers and so forth, we cannot say, 'by the rulings of Imam Abu Hanifa' or 'through their *ijtihaad* found in their books'; since *Taqleed* of any person in Islamic beliefs is impermissible."[40]

We realise from these statements of the able scholars that *Taqleed* of an erudite Imam is not permissible in two things: necessary beliefs and explicit laws. As for the laws that have been extracted from the Qur'an, Hadith and by consensus – with the use of *ijtihaad* – it is necessary to make *Taqleed* of an Imam to follow these laws because everyone is not able to do so individually. Now, we find the following objections from the modern day *Salafis* who oppose the *Ahl As-Sunnah* in this matter. We shall present some of their objections and answer them briefly.

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[39] Tafseer Kabir, Surah Taubah, Verse 6, Imam Fakhruddin Raazi [d. 606 AH]

[40] Tafseer Ruh ul Bayaan, Surah Hud, Verse 109, Shaykh Ismail Haqqi Al-Bursevi [d. 1137 AH]

OBJECTIONS TO TAQLEED

Objection 1:

If Taqleed was necessary, why didn't any of the Sahaaba practice it?

Answer

The Companions of the Messenger of Allah ﷺ had no requirement for *Taqleed* because they were all *Mujtahideen* due to their blessed companionship with the Prophet ﷺ. We have seen from the previous pages that the four Imams considered the statements of the all the Companions, especially the Rightly Guided and the scholarly Companions, as proof and something by which they issued rulings. If there is a large congregation in a Mosque, the *Shari'ah* allows one to appoint a caller [*Mukabbir*] who shall call out the *Takbeer* so that the people in the furthest rows may be able to follow the Imam correctly. However, those who are in first row, directly behind the Imam – what need do they have to listen to the caller? They gain direct acknowledgement from the Imam's call. Similarly, the Imams of *Fiqh* are like the appointed callers of a large congregation of the Ummah. They have prior knowledge of the Imam's voice [in this case – the Messenger of Allah ﷺ] and the action of the first rows of Muslims [the statements of the Companions]. The rest of the congregation [*Muqallideen* and laymen Muslims] is dependent on this caller. Ultimately, the entire congregation will be following the Imam. May Allah Ta'ala cause this example to be understood!

Objection 2:

The Quran and Hadith are sufficient to guide us. What need there is for Fiqh of the Imams? The Qur'an contains everything and it is a guide for mankind. Why should we go to the Mujtahideen?

Answer

The Qur'an and *Hadith* – indeed contain everything – but one requires skills and knowledge to derive rulings from them. The ocean contains many treasures, but one requires divers with necessary equipment to obtain the treasures from the deepest trenches. The Qur'an has been made easy to memorise but it is not easy to extract rulings from it. If deducing from the Holy Qur'an was easy and simple, then what need was there for the *Hadith?* What need was there for the Prophet ﷺ to explain and elucidate the verses of the Qur'an? Hence, we are in need of the *Mujtahideen Imams* who have dived into the limitless ocean of the Qur'an and *Hadith* and extracted the pearls for the entire Ummah to benefit.

Objection 3

In Taqleed, a person makes someone besides Allah the decider and this is polytheism [shirk]. Hence, Taqleed is Shirk. Allah says 'Judgement belongs to Allah Alone' – Surah Yusuf, verse 67.

Answer

In the previous pages we have provided Qur'anic verses in support of *Taqleed*. Will these verses be deemed polytheistic? Does Allah command polytheism and monotheism, together?

Allah Forbid! If taking someone else besides Allah is polytheism, then accepting *Hadith* will also be polytheism because we have now accepted the Prophet ﷺ to be the decider. Imam Bukhari, Imam Muslim, Imam Nassaai, Imam Abu Dawood and other Imams of Hadith were all *Muqallideen* of various Imams. Did they commit polytheism as well? This sort of objection was posed by the *Khawaarij* in the time of Ali ibn Abi Taalib رضي الله عنه when they accused the Companions of polytheism because they had appointed Abu Musa Al-Ashari رضي الله عنه as a decider. We see that the offspring of those *Khawaarij* have flourished in the modern world.

Objection 4

Abu Hanifa has said: 'When a Hadith is proven to be sound, that is my way'. Therefore, if we find a Sahih Hadith in contradiction to his ruling, we will accept the Hadith.

Answer

This indeed is the statement from Imam Abu Hanifa رضي الله عنه which he has mentioned when comparing his opinion to that of the *hadith*. This is also proven in the previous pages where we learned that the Imam Abu Hanifa رضي الله عنه exercised opinion when a *Hadith* was not proven to be established. However, one requires to be a *Muhaddith* of the calibre of Imam Daarimi and Imam ibn Hibbaan to verify this situation. In modern times, we lack these kind of scholars and therefore it does not give anyone the right to reject the opinion of Imam Abu Hanifa رضي الله عنه.

Objection 5

How can all the four Fiqh schools be correct when there are contradictions between them? The Hanafis say that it is Makrooh Tahrimi to recite Al-Fatiha behind the Imam and the Shawaafi' say that is Waajib. How can both be on the truth?

Answer

There is a difference between that which is correct and that which is the truth. A person will not be rebuked by Allah Ta'ala for the mistakes of a *Mujtahid*. War took place between the Companions in Siffeen – both of them were correct but the truth was with Ali ibn Abi Taalib ﵁. Amir Muawiya ﵁ was mistaken but he, and those who followed him, will be forgiven for the mistake. The Hadith clearly dictates this phenomenon:

> "When a judge passes a judgement in which he strives [*fajtahad – ijtihaad*] and was truthful – he receives two rewards. And when he judges and is mistaken – he receives one reward"[41]

Hence, it is far safer to follow a *Mujtahid* and be forgiven then to be an outcast and be cursed.

[41] Jaami Tirmidhi, Hadith 1326

Epilogue

It is compulsory [*wajib*] for a *Muqallid* to follow one of the four *Mujtahideen Imam*. Without this, one will become misguided and become an outcast from the majority of Ummah. The Prophet ﷺ said,

> "My nation will not unite on misguidance, so if you see the differing, follow the great majority"[42]

The majority of this Ummah are the followers of the *Mujtahideen* – this itself shows one where the truth is found. May Allah Almighty cause us to remain guided until we meet Him.

[42] Sunan Ibn Ma'jah, Hadith 3950